United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 07-980**
	)	**Issued: September 5, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Baltimore, MD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 1, 2006 merit decision denying his claim for a left knee condition and authorization of left knee surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his left knee condition and need for left knee surgery were causally related to his August 8, 1997 employment injury.

FACTUAL HISTORY

On August 8, 1997 appellant, then a 46-year-old maintenance mechanic, filed a traumatic injury claim alleging that he injured his right knee at work on that date. Appellant indicated that, after kneeling on a catwalk while working, he was unable to straighten his right knee and "it felt

dislocated" when he stood up. He did not stop work but he started performing limited-duty work for the employing establishment.

In various medical reports dated August 8, 1997, appellant reported that he had right knee pain and his attending physicians diagnosed right knee strain. He did not report any left knee problems at this time. The findings of diagnostic testing from late August 1997 showed a tear of the posterior horn of the right medial meniscus. The Office accepted that appellant sustained a right knee strain, a right medial meniscus tear and internal derangement of the right knee and paid compensation for periods of disability. On November 21, 1997 appellant underwent surgery for a right partial medial meniscectomy which was authorized by the Office.

On September 23, 2002 Dr. Kevin E. McGovern, an attending Board-certified orthopedic surgeon, noted that appellant reported that his left knee started becoming painful "during the course his treatment" of his 1997 right knee injury. He noted that the findings of September 2002 x-ray testing revealed that appellant had degenerative arthritis affecting the medial compartments of both knees. On October 30, 2002 Dr. McGovern stated that on examination appellant exhibited medial joint tenderness in both knees without instability. Dr. McGovern diagnosed degenerative arthritis of the knees and noted, "It is my opinion that appellant's degenerative arthritis has been aggravated and accelerated by his injury and medial meniscectomy." On January 8, 2003 Dr. McGovern indicated that appellant had marked tenderness in his right medial joint but very mild tenderness in his left medial joint. He diagnosed "status post strain of his knee with meniscectomy, right knee and exacerbation and acceleration of degenerative arthritis as a result of his 1997 injury and treatment.

On November 3, 2003 appellant underwent a total replacement of the right knee which was authorized by the Office. He also claimed that his left knee condition was related to his August 9, 1997 employment injury and requested authorization for a total replacement of the left knee. In response to questions posed by appellant's rehabilitation nurse, Dr. McGovern responded in late October 2003, that appellant's "left knee trauma" was related to the August 9, 1997 employment injury because the preexisting degenerative joint disease was aggravated by the right knee injury. He stated that appellant should have a left knee replacement six weeks or more after his right knee replacement.

On March 5, 2004 Dr. Willie E. Thompson, a Board-certified orthopedic surgeon acting as an Office medical adviser, determined that appellant did not sustain an injury to the left knee that was consequential to the accepted right knee injury. He stated:

> "In some cases where an injured knee may require protected weight bearing for a period of time there may be some discomfort in the opposite knee due to overuse and stress. Once that has ceased, the contralateral knee returns to normal. In this case, this individual underwent a total knee replacement on November 2, 2003 more than four months ago. Clearly at this point in time any aching sensation or discomfort in the left knee would have resolved without any residuals whatsoever.

In an April 1, 2004 decision, the Office denied appellant's claim for left knee surgery on the grounds that appellant had not shown that the requested surgery was necessitated by an employment-related condition.

On April 7, 2004 Dr. McGovern stated that appellant's left knee condition was related to the employment-related right knee injury sustained on August 8, 1997. He indicated that appellant's painful right knee caused him to have an abnormal gait for an extended time and posited that appellant was required to put added stress and strain on his left knee and aggravated the preexisting degenerative arthritis of his left knee. Dr. McGovern stated that appellant needed a left knee replacement. On August 9, 2004 Dr. McGovern provided an opinion that appellant's need for a left knee replacement was related to his August 8, 1997 right knee injury. He stated that appellant had an abnormal gait due to his employment-related right knee condition which caused "increased weight bearing on his left knee in an effort to avoid the painful right knee, which then caused a significant exacerbation of preexisting degenerative changes in his left knee…."

In a March 29, 2005 decision, an Office hearing representative determined that there was a conflict in the medical opinion between Dr. McGovern and Dr. Thompson regarding whether appellant's left knee condition and the need for left knee surgery were causally related to his August 8, 1997 employment injury. The hearing representative set aside the Office's April 1, 2004 decision and remanded the case for referral to an impartial medical specialist.

In September 2005, the Office referred appellant to Dr. Sankara Kothakota, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion regarding whether appellant's left knee condition and need for left knee surgery were causally related to his August 8, 1997 employment injury.[1]

On October 17, 2005 Dr. Kothakota stated that appellant reported having problems with his left knee after undergoing a right knee replacement on November 6, 2003 and indicated that he felt that the pain in his right knee and the consequent overuse of his left knee caused him to develop a left knee condition. He stated that examination of the left knee revealed a moderate amount of varus deformity and palpable osteophyte on the medial aspect of the knee. Dr. Kothakota indicated that the left knee was tender on the medial aspect and that x-rays showed medial compartment osteoarthritis. He stated that x-rays of the right knee showed very satisfactory alignment of the knee with implants in place and diagnosed post total right knee arthroplasty, degenerative arthritis of the left knee including medial compartment osteoarthritis, and moderate to severe obesity.[2] Dr. Kothakota stated that appellant's left knee symptoms were directly related to the natural progression of the degenerative arthritis of his left knee and noted that his left knee condition was aggravated by obesity. He reviewed the medical record and found that there was no indication that appellant's left knee condition was aggravated by an employment-related condition. Dr. Kothakota stated that there was no direct injury to the left knee in 1997. He noted, "Certainly, [appellant] needs either unicompartmental or a total knee arthroplasty, but that was directly related to the natural progression of joint disease and obesity and his varus deformity."

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[1] Appellant was initially referred to Dr. Kevin Hanley, a Board-certified orthopedic surgeon, for an impartial medical examination. However, the Office took Dr. Hanley off the list of impartial medical specialists and appellant had to be referred to another impartial medical specialist.

[2] The record reveals that appellant weighed approximately 300 pounds.

In a January 5, 2006 decision, the Office determined that appellant did not establish that his left knee condition and need for left knee surgery were causally related to his August 8, 1997 employment injury. The Office found that the weight of the medical evidence regarding this matter rested with the well-rationalized opinion of Dr. Kothakota.

Appellant requested a hearing before an Office hearing representative. At the August 28, 2006 hearing, he testified that he fell on both knees on August 8, 1997. Appellant alleged that Dr. Kothakota asked to perform his left knee surgery and suggested that Dr. Kothakota changed the rationale for his medical opinion after he refused his request.[3] In a December 1, 2006 decision, the Office hearing representative affirmed the Office's January 5, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5]

Section 8103(a) of the Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[6] In order to be entitled to reimbursement of medical expenses, appellant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.[7] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[8]

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician

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[3] Appellant submitted August 22, 2006 statements which were similar to his August 28, 2006 testimony. He also submitted July 19 and October 4, 2006 reports in which Dr. McGovern indicated that he sustained degenerative arthritis of the left knee due to his August 8, 1997 injury.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Elaine Pendleton,* 40 ECAB 1143, 1145 (1989).

[6] 5 U.S.C. § 8103.

[7] *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

[8] *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[10] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

ANALYSIS

The Office accepted that appellant sustained a right knee strain, a right medial meniscus tear and internal derangement of the right knee. On November 21, 1997 appellant underwent a right partial medial meniscectomy which was authorized by the Office. He contends that his left knee condition was related to his August 9, 1997 employment injury and requested authorization for a total replacement of his left knee.

The Office properly determined that there was a conflict in the medical opinion between Dr. McGovern, an attending Board-certified orthopedic surgeon, and Dr. Thompson, a Board-certified orthopedic surgeon acting as an Office medical adviser, regarding whether appellant's left knee condition and need for left knee surgery were causally related to his August 8, 1997 employment injury.

In April 7 and August 9, 2004 reports, Dr. McGovern determined that appellant's left knee condition and need for left knee surgery were related to the employment-related right knee injury he sustained on August 8, 1997. He indicated that the abnormal gait caused by appellant's painful right knee placed added stress on his left knee and aggravated the preexisting degenerative arthritis of his left knee. In contrast, Dr. Thompson concluded on March 5, 2004 that appellant's need for left knee surgery was not employment related because he did not sustain an injury to his left knee that was consequential to the accepted right knee injury. He stated that there might be some cases where an injured knee might require protected weight bearing and cause discomfort in the opposite knee, but posited that such discomfort would only be temporary.

In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Kothakota, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.[12] The Board finds that the weight of the

[9] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[10] 5 U.S.C. § 8123(a).

[11] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[12] *See supra* note 10 and accompanying text.

medical evidence is represented by the thorough, well-rationalized opinion of Dr. Kothakota.[13] The report of Dr. Kothakota establishes that appellant's left knee condition and need for left knee surgery were not causally related to his August 8, 1997 employment injury.

In an October 17, 2005 report, Dr. Kothakota concluded that appellant's left knee condition was not related to his employment-related August 8, 1997 right knee injury and that his proposed left knee surgery was not necessitated by an employment-related condition. He stated that appellant reported having problems with his left knee after undergoing a right knee replacement on November 6, 2003 and indicated that he felt that the pain in his right knee and the consequent overuse of his left knee caused him to develop a left knee condition. Dr. Kothakota stated that, examination of the left knee revealed a moderate amount of varus deformity and palpable osteophyte on the medial aspect of the knee and diagnosed post total right knee arthroplasty, degenerative arthritis of the left knee including medial compartment osteoarthritis and moderate to severe obesity.

The Board has carefully reviewed the opinion of Dr. Kothakota and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Kothakota's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[14] He provided medical rationale for his opinion by explaining that appellant's left knee symptoms were directly related to the natural progression of the degenerative arthritis of his left knee and by noting that his left knee condition was aggravated by his obesity and his varus deformity. Dr. Kothakota stated that there was no direct injury to the left knee in 1997 and indicated that he had reviewed the medical record and found that there was no indication that appellant's left knee condition was related to his employment-related right knee condition. He acknowledged that appellant needed left knee surgery but explained that the surgery was necessitated by nonwork-related conditions.

The Board notes that appellant testified at his oral hearing that he fell on both knees on August 8, 1997, but the record reveals that he made no such assertion in the claim form for the August 8, 1997 injury and the contemporaneous medical evidence does not mention a fall. Appellant alleged that Dr. Kothakota was biased against him, but he provided no support for this argument. After Dr. Kothakota's evaluation, appellant submitted July 19 and October 4, 2006 reports in which Dr. McGovern indicated that he sustained degenerative arthritis of the left knee due to his August 8, 1997 injury. However, as Dr. McGovern was on one side of the conflict in the medical evidence, his additional reports are essentially duplicative of his prior stated opinion and are insufficient to give rise to a new conflict.[15]

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[13] *See supra* note 11 and accompanying text.

[14] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[15] *See Richard O'Brien*, 53 ECAB 234 (2001).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his left knee condition and need for left knee surgery were causally related to his August 8, 1997 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' December 1, 2006 decision is affirmed.

Issued: September 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board